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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 17/4, the Working Group reviews its strategic objectives, activities and outcomes of the past three years and identifies challenges ahead.

* Late submission.

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I. Introduction

1. The Working Group on the issue of human rights and transnational corporations and other business enterprises was established by the Human Rights Council, through its resolution 17/4, in June 2011. The Working Group has a broad mandate focused on promoting the dissemination and effective and comprehensive implementation of all three pillars of the Guiding Principles on Business and Human Rights for the implementation of the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex). The Working Group is also mandated to guide the annual Forum on Business and Human Rights.

2. This is the third report submitted to the Human Rights Council by the Working Group. It comprises a review of the strategic objectives, activities and outcomes of the first three years and identifies challenges ahead.[1]

II. Strategic considerations and methods of work

3. In its first report to the Human Rights Council (A/HRC/20/29), the Working Group set out strategic considerations and priorities for the implementation of its mandate. Those have informed the Working Group's approach to identifying focus areas and its methods of work for the implementation of its activities. The Working Group's strategic priorities have focused on the dissemination, implementation and embedding of the Guiding Principles.

4. From the outset, the Working Group has noted that the scale and complexity of implementing its mandate required a strategic approach to achieving global dissemination of the Guiding Principles. While the unanimous endorsement of the Guiding Principles by the Human Rights Council signalled a strong global political commitment, targeted efforts were necessary in order to effectively disseminate them worldwide to all stakeholders. Consequently, the Working Group has strived to reach out to new audiences, that is, to reach States and business enterprises that have not previously been engaged in the business and human rights agenda, by organizing and participating in regional and national events; has sought to engage multipliers to disseminate the Guiding Principles to large groups, such as business associations, lawyers' associations and development and sustainability platforms; and has worked with catalysts that focus on developing tools and guidance for stakeholders on the implementation of the Guiding Principles.

5. The Working Group has prioritized efforts towards the effective and comprehensive implementation of the Guiding Principles. That has included engaging decision makers and technical staff in States and business enterprises responsible for the concrete policy commitments leading to the actual implementation of the Guiding Principles. Engagement has also taken place with civil society and national human rights institutions, and with a variety of initiatives at the national, regional and global levels. The Working Group has promoted such efforts wherever possible and appropriate.[2]

6. A further priority for the Working Group has been to maximize the reach of the Guiding Principles by promoting the adoption or embedding of the Guiding Principles in global, regional and national governance bodies. It has done so by engaging with

[1] The report is accompanied by five addenda, containing the outcomes of specific work streams and activities initiated by the Working Group, as well as the reports from the Working Group's country visits to Ghana and the United States of America.

[2] See www.ohchr.org/Documents/Issues/Business/WGActivitiesAndEngagement.pdf.

institutions that are able to play a significant role in requiring, or encouraging, States and business enterprises to implement the Guiding Principles. These include regional intergovernmental organizations, international financial institutions, international employers and labour organizations, United Nations agencies and multi-stakeholder initiatives.

7. The Working Group has periodically revised its methods of work and has regularly published information about its activities and engagement.[3] It has sought to pay particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and to the specific challenges that may be faced by women and men.

III. Key activities, strategic interventions and outcomes

8. Within its mandate and the strategic considerations and priorities referred to in the previous section, the Working Group has engaged in a wide range of activities and projects.[4]

9. The following section contains reflections on some of the Working Group's key activities and strategic interventions, as well as actual or expected outcomes and impacts achieved.

A. National action plans to implement the Guiding Principles

10. National action plans are a common policy tool used by Governments in all regions to set out priorities and programmed actions in specific policy areas. For example, in the Vienna Declaration and Programme of Action (para. 71), the World Conference on Human Rights recommended that "each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights".

11. Throughout its mandate, the Working Group has called on States to develop national action plans as a key tool for effective implementation of the Guiding Principles,[5] while acknowledging that implementing the Guiding Principles can take many forms, and that one size does not fit all.

12. Some Governments have launched national action plans to implement the Guiding Principles,[6] including Denmark,[7] Italy,[8] the Netherlands[9] and the United Kingdom of Great Britain and Northern Ireland,[10] and others are reported to be developing such plans.

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[3] See www.ohchr.org/EN/Issues/Business/Pages/WorkingMethods.aspx.

[4] See www.ohchr.org/EN/Issues/Business/Pages/WGEventsStatements.aspx.

[5] See, for example, A/HRC/23/32, para. 71 (f) and A/HRC/WG.12/6/1, para. 5.

[6] The 2011 corporate social responsibility policy update of the European Commission required the development of national action plans for all European Union Member States. See European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: a renewed EU Strategy 2011–14 for Corporate Social Responsibility" (25 October 2011). Available from http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf.

[7] Available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[8] Ibid.

[9] Available from www.globalgovernancewatch.org/docLib/20140212l_dutch-national-action-plan-dec-2013.pdf.

13. While the plans that have been launched to date take different forms, they amount to policy-level documents that outline the commitments and plans of Governments to implement the Guiding Principles at the national[11] and international level, including through foreign policy initiatives. Alongside those developments, some States have initiated processes that, although not labelled formally as national action plans, seek to promote the implementation of the Guiding Principles and highlight the relevance of a number of laws, regulations and policies to business and human rights issues.[12]

14. Achieving actual implementation by States and business enterprises remains the overriding challenge in the business and human rights agenda, as it is in the overall international human rights law regime. At a structural level, a number of impediments need to be overcome to achieve wider and more comprehensive State and business implementation. At the same time, a number of opportunities exist that could bring about more rapid progress. In its first report to the Human Rights Council (A/HRC/20/29), the Working Group identified a number of incentives to implement the Guiding Principles. State incentives include the opportunity to create sustainable and inclusive growth and to address the challenges posed by globalization, such as the expanding reach and impact of business activities and the resulting governance gaps, which have created a perception that Governments are failing to protect the rights of vulnerable persons and ensure accountability. Possible business motivations range from lowering risk and avoiding conflict to improving stakeholder relations and safeguarding productivity. However, the Working Group also noted that current incentive structures were neither inevitable nor fixed, and that they too often led to decisions that were detrimental to the enjoyment of human rights. Recent empirical research by the Institute for Human Rights and Business highlights further a number of such incentives, as well as disincentives, in the "political economy" of States that influence government performance relating to human rights and business.[13] Commonly cited disincentives for States include lack of political will with little voter interest in the subject; a perception of measures around human rights as an economic constraint and cost; conflicts of interest and short-termism; lack of policy coherence between government ministries; and allegations of protectionism. Commonly cited incentives include meeting international legal obligations to protect human rights; providing a more accountable trade–development nexus; providing greater clarity of expectations for business; providing greater clarity for the role of embassies and more effective foreign policy; and competitive advantage within the political economy of the State.[14]

15. The Working Group considers that national action plans can provide a vehicle for tackling disincentives and reinforcing the incentives that are relevant to effective State performance with respect to meeting human rights obligations in the context of business activities in a coherent and comprehensive manner. In particular, such plans:

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[10] Available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf.

[11] Several Governments have also developed, or are in the process of developing, plans of action or strategies for corporate social responsibility.

[12] See, for example, United States of America, "U.S. Government approach to business and human rights" (2013), available from http://photos.state.gov/libraries/korea/49271/july_2013/dwoa_USG-Approach-on-Business-and-Human-Rights-updatedJune2013.pdf. See a more comprehensive discussion of the document in A/HRC/26/25/Add.4.

[13] See Institute for Human Rights and Business, *State of Play – Human Rights in the Political Economy of States: Avenues for Application*. Available from www.ihrb.org/pdf/2014-03-18_State-of-Play_HR-Political-Economy-States.pdf.

[14] Ibid., p. 10.

(a) Trigger cross-functional coordination among departments in charge of economic regulation and promotion, foreign policy, human rights and justice within Governments;

(b) May encourage constructive multi-stakeholder dialogue on business and human rights issues that can be complex;

(c) Allow for the identification of concrete national policy and regulatory options for promoting the implementation of all three pillars of the Guiding Principles according to a country's most pressing priorities;

(d) Set agreed processes in motion whereby States, in consultation with business enterprises and civil society, can adjust and review plans over time;

(e) May offer sufficient flexibility to respond to the range of business and human rights challenges that different countries in different geographies may face;

(f) Can provide greater transparency regarding the commitments of States and allow States to exchange best practices and lessons learned;

(g) May, in whatever form they take, offer a common format and language for the implementation of the Guiding Principles that may be conducive to promoting accountability, global alignment, "levelling of the playing field" and coordination among States.

16. The Working Group decided at its seventh session to make national action plans a key strategic priority, noting that many States and other stakeholders have asked for concrete guidance on how to proceed, and drew up a road map to support the development of such plans (A/HRC/WG.12/7/1, para. 5). The road map includes an open consultation on the strategic elements of national action plans in the implementation of the Guiding Principles, held in February 2014; the launch of the online repository on State national action plans;[15] an open e-consultation on a draft set of essential substantive elements and considerations for the development of national action plans; and a State survey to gather an overview of and collect relevant existing practices by Governments.

17. In addition, the road map includes: convening an expert workshop during the eighth session of the Working Group in May 2014 to discuss a draft collection of essential substantive elements that all national action plans should include; engaging with a key initiative to develop tools to support the development of national action plans conducted by the International Corporate Accountability Roundtable and the Danish Institute for Human Rights, through participation in their Latin America and Asia-Pacific dialogue meetings, as well as in a consultation with business representatives;[16] and complementing guidance being developed by stakeholders by producing a guide on the process, substantive content and review of national action plans, to be preliminarily presented at the annual Forum in December 2014, reviewed in 2015 and finalized in 2016 after a pilot period envisaged to begin after the launching of the guide in late 2014.

18. Finally, the Working Group decided to focus on the topic of national action plans in its report for submission to the General Assembly at its sixty-ninth session; in the report the Working Group will provide details of its observations and further reflections on guidance to support national action plans.

19. The Working Group notes that a consensus is emerging with regard to the basic process elements in developing a national plan of action. For example, the process should

[15] See www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[16] See www.business-humanrights.org/Documents/icar-dihr-naps-project.

include meaningful participation and inclusive stakeholder consultation (involving business and civil society) and it should involve a broad cross section of relevant government ministries and agencies, as well as range of different business sectors. Further, any national plan of action should focus on the material issues affecting the population, in particular vulnerable groups, which underlie conflict between business and society.

20. The Working Group also considers that an ongoing review and/or follow-up process, both at the national and international levels, is necessary, and that it must involve civil society. It notes that more expert guidance and analysis of early lessons on the development, review and follow-up of national action plans are needed. The Working Group intends to include reviews of the progress made in the development of national action plans in its annual reports to the Human Rights Council.

21. The understanding of what substantive elements should be included in national action plans is less advanced than the understanding of the process elements. Thus the Working Group considers the identification of and clearer guidance on such components of national action plans to be of critical importance, warranting specific focus in the Working Group consultation in May. Essential substantive elements already emphasized by the Working Group and stakeholders include access to remedy (judicial and non-judicial); public procurement; implementation by publicly owned and controlled enterprises; due diligence requirements for business enterprises, such as in licensing processes, corporate reporting, trade and investment; and development policies and frameworks.

22. The baseline normative expectations are set by the Guiding Principles themselves; the guidance provided by the Working Group will assist States and other relevant actors to unpack the practical implications, as well as any implications on law and policy, to enable more effective implementation. The Working Group looks forward to engaging with States and other stakeholders in this process.

B. Tracking business uptake

23. The potential of the Guiding Principles will not be realized without business enterprises actively engaging in efforts to implement their responsibility to respect human rights, as set out in the Guiding Principles. The Working Group has therefore considered it important to track business uptake of the Guiding Principles and to extend support, where possible, to implementation efforts.

24. In 2012, the Working Group commissioned a pilot corporate questionnaire on business and human rights as a means to seek information on corporate awareness, uptake and implementation of the Guiding Principles.[17] In 2013, the Working Group commissioned another questionnaire as the second phase in the pilot initiative.[18] The objectives of the 2013 questionnaire were to understand the progress in the dissemination of the Guiding Principles among the business community; to highlight the implementation motivations and challenges; and to understand the support that business enterprises need to implement their corporate responsibility to respect human rights.

25. A total of 153 business representatives responded to the 2013 questionnaire, which represents an increase of 23.5 per cent from the 117 businesses representatives that responded to the 2012 questionnaire. The key findings from the 2013 questionnaire include the fact that the majority of the sampled businesses are aware of the Guiding Principles.

[17] See A/HRC/23/32/Add.2. See also www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx.

[18] See A/HRC/26/25/Add.1 for a detailed report of the findings.

However, it should be noted that the respondents do not represent a random sample, and that it is likely that respondents were already familiar with or interested in the business and human rights agenda, having self-selected to complete the survey.

26. The responses indicated that the top human rights priorities of respondents were internal awareness-raising and integration, improving complaints/grievance mechanisms, building accountability in the business for human rights responsibility and (for large enterprises in particular) mapping risks. Further, nearly three in five business enterprises sampled have a public statement of human rights, while 15 per cent of the responding enterprises that do not have a public statement have an internal statement that is not public.

27. The questionnaire responses reveal that corporate responsibility or sustainability departments tend to be leading on human rights within the enterprise. One in two of the sampled business enterprises stated that they were actively engaged in the human rights agenda, including by working on their own policies and practices. In that regard, according to the responses, both internal and external factors/drivers act as motivators to address human rights.

28. With respect to challenges faced, half of the business enterprises sampled highlighted that moving from policy to practice on human rights and addressing human rights in business relationships were their main challenges. When asked about "eco-system support", the most common responses referred to the need for training and educational opportunities, effective government enforcement of local law and multi-stakeholder initiatives. Other responses, although less common, referred to public benchmarking and legal requirements to conduct human rights due diligence.

29. The Working Group wishes to express its thanks to those business enterprises that provided responses and to the International Chamber of Commerce, the International Organisation of Employers, the Global Business Initiative on Human Rights and the University of Denver for conducting the survey. The results and findings of the questionnaire will be used by the Working Group to consider its approach to develop a more detailed mapping of uptake and implementation of the Guiding Principles, to fulfil a need to track awareness and progress in the dissemination of the Guiding Principles and to identify common obstacles to business enterprises implementing the corporate responsibility to respect human rights.

30. The medium-term goal of the Working Group is to enhance the survey methodology. Furthermore, the Working Group intends to seek additional resources to conduct a more extensive survey and build an authoritative repository of information that can help measure progress, both in quantitative and qualitative terms, in business implementation of the Guiding Principles. The assessment of businesses performance is a matter of utmost importance to be considered in the future of the business and human rights field, taking into consideration the emerging performance indicators and reporting frameworks.[19]

31. In this context, the Working Group has lent its support to the Reporting and Assurance Frameworks Initiative and to the Global Reporting Initiative as strategically relevant to its mandate. The Reporting and Assurance Frameworks Initiative is a consultative initiative seeking to develop voluntary public reporting and assurance

[19] See, for example, Damiano de Felice, "Measuring the effectiveness of grievance mechanisms: between key performance indicators and engagement with affected stakeholders", entry published on the Measuring Business & Human Rights website. Available from http://blogs.lse.ac.uk/businesshumanrights/2014/04/11/damiano-de-felice-measuring-the-effectiveness-of-grievance-mechanisms-between-key-performance-indicators-and-engagement-with-affected-stakeholders/.

frameworks based on the Guiding Principles, led by Shift, a non-profit centre for business and human rights, and Mazars, a global audit, accounting and consulting group.[20] The Global Reporting Initiative is a non-profit organization that promotes corporate sustainability reporting through its voluntary reporting framework, including the Sustainability Reporting Guidelines, the latest version of which includes some elements of the Guiding Principles.[21] The Working Group encourages all actors in this field to coordinate their efforts to avoid duplication and build upon each other's work.

C. Exploring options to promote increased access to effective remedy

32. The Guiding Principles recognize the right to an effective remedy for victims of business-related human rights abuses. A central part of the State duty under the Guiding Principles entails ensuring effective access to remedy through judicial and non-judicial mechanisms. Business enterprises that have caused or contributed to adverse impacts should also provide for or cooperate in remediation through legitimate mechanisms, as part of their corporate responsibility to respect human rights.[22]

33. Access to effective remedy has procedural and substantive aspects; that is, it speaks to both mechanisms and outcomes. Grievance mechanisms can take a variety of forms, including criminal and civil judicial mechanisms; administrative mechanisms (that may impose sanctions); mechanisms provided by national human rights institutions (including mediation, adjudicative or semi-adjudicative processes); State-based non-judicial mechanisms, such as the national contact points supporting the OECD Guidelines for Multinational Enterprises; mechanisms linked to international or regional financing institutions; and dialogue-based dispute resolution, including company-level grievance mechanisms. Customary dispute resolution may also play a role in providing remedy for grievances related to business conduct.[23] The remedies provided by judicial and non-judicial mechanisms may take a range of substantive forms. In order to be effective, remedy outcomes should be able to "counteract or make good"[24] any human rights harms that have occurred.

34. The Working Group has continuously sought to identify challenges and lessons learned with regard to the use and effectiveness of judicial and non-judicial mechanisms, including through its country visits and communications, the regional and annual forums and consultations. A key focus has been to explore whether and how non-judicial remedy mechanisms deliver effective remedy.

35. Together with the Corporate Social Responsibility Counsellor of Canada, the Working Group organized an expert workshop in April 2013 to discuss experiences and challenges with non-judicial grievance mechanisms.[25] The Working Group, furthermore, solicited a project from ACCESS Facility, a global non-profit organization focusing on company–community dispute resolution processes, to explore how outcomes can be considered effective.[26] In addition, the Working Group reported on the effectiveness of non-judicial grievance mechanisms for indigenous peoples seeking remedy for business-related human rights abuses and made a number of recommendations in that regard (A/68/279,

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[20] http://shiftproject.org/project/human-rights-reporting-and-assurance-frameworks-initiative-rafi.

[21] See the G4 Sustainability Reporting Guidelines, available from www.globalreporting.org/reporting/g4/Pages/default.aspx.

[22] Guiding principles 22 and 25.

[23] See, for example, A/68/279, paras. 45–47.

[24] See guiding principle 25 and its commentary.

[25] The report from the workshop is included as an addendum to the present report (A/HRC/26/25Add.3).

[26] See www.ohchr.org/EN/Issues/Business/Pages/ActivitiesAndEngagement.aspx.

paras. 32–53). Finally, the Working Group has engaged with experts and civil society organizations working on non-judicial grievance mechanisms, including the Centre for Research on Multinational Corporations (SOMO).

1. Effectiveness of non-judicial grievance mechanisms

36. The Guiding Principles clarify that judicial remedy remains at the core of access to remedy, while non-judicial mechanisms may play complementary and supportive roles. The use of some non-judicial grievance mechanisms, including those linked to international financial institutions, appears to have increased in recent years.[27] This may indicate an increase in awareness or trust among users and their representatives. It may also indicate a paucity of alternative options.

37. Nonetheless, concerns have been raised about the effectiveness of non-judicial grievance mechanisms, relating to both process and outcomes.[28] With regard to process, concerns include allegations of lack of transparency, lack of ability to enforce judgements, dependence on cooperation from the business enterprise, lack of monitoring of compliance with agreed outcomes, lack of capacity on the part of both the mechanism and its users, structural power imbalances that impair victims' ability to effectively represent themselves, lack of access to independent counsel and lack of consultation with victims in designing the mechanisms.[29] Other concerns relate to the inclusion of clauses in the final settlement of the claim that preclude further civil law action by victims against the business enterprise.[30]

38. With regard to outcomes, concerns include the fact that some remedy mechanisms may deliver outcomes that are not rights-compatible, for example in providing types of remedy that are not appropriate to the severity of the harm suffered. Over-reliance on

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[27] See, for example, appendix C of the 2013 annual report of the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation on the caseload of CAO from 2000 to 2013, which indicates an increase in the number of cases handled since the inception of the mechanism, and statistics on the cases handled by national contact points for the OECD Guidelines on Multinational Enterprises, available from http://oecdwatch.org/cases/statistics. See also the 2013 annual report of the European Bank for Reconstruction and Development on its Project Complaint Mechanism (p. 4), which points to a continuing increase in complaints received (available from www.ebrd.com/downloads/integrity/PCM_AR_2013_final.pdf). See further the European Investment Bank Complaint Mechanism Activity Report 2009–2012 (available from www.eib.org/infocentre/publications/all/complaints-mechanism-annual-report-2009-2012.htm), in which it is noted that complaints more than doubled between 2007 and 2012 and that the number of admissible complaints rose by a third between 2009 and 2012.

[28] See "SOMO statement to the UN Regional Forum on Business and Human Rights, Medellín, 28–30 August 2013" (available from www.ohchr.org/Documents/Issues/Business/submissionsColombia/SOMO.pdf) and SOMO, "Grievance mechanisms fail to give workers access to remedy", 31 March 2014 (available from http://somo.nl/news-en/grievance-mechanisms-fail-to-give-workers-access-to-remedy). See also the oral intervention by OECD Watch at the introductory exchange for interested stakeholders with the Working Group, 20 January 2012 (available from http://oecdwatch.org/publications-en/Publication_3742) and the OECD Watch submission to the 2011 Annual Meeting of the National Contact Points (available from http://oecdwatch.org/publications-en/Publication_3693).

[29] For a more detailed discussion of concerns relating to non-judicial grievance mechanisms, see A/HRC/26/25/Add.3.

[30] See, for example, MiningWatch Canada, "International condemnation for Barrick Gold's effort to seek immunity from legal action by rape victims", 6 June 2013 (available from www.miningwatch.ca/news/international-condemnation-barrick-gold-s-effort-seek-immunity-legal-action-rape-victims) and Mines and Communities, "Barrick Gold: North Mara's problematic grievance mechanism", 26 February 2014 (available from www.minesandcommunities.org/article.php?a=12570).

certain types of remedy — in particular, monetary compensation — to the exclusion of other, potentially more transformative outcomes, has also been raised as a concern.

39. The Guiding Principles stipulate effectiveness criteria for non-judicial grievance mechanisms pertaining to both process and outcomes.[31] With respect to process, the Working Group notes that non-judicial grievance mechanisms vary greatly. Not all mechanisms will be appropriate for all types of human rights harm; for example, dialogue-based processes may not be effective or appropriate when used on their own, without parallel judicial proceedings, in cases of serious abuses. However, it would be false to assume that non-judicial grievance mechanisms cannot be effective; most non-judicial grievance mechanisms have the ability to conduct some level of fact-finding and establish the nature of the impact and its causes, and will usually be able to issue instructions or recommendations. Through its consultations and engagements, the Working Group has observed that non-judicial mechanisms can be successful in transforming corporate–community relationships.[32]

40. As stipulated in guiding principle 31 (f), outcomes and remedies must be rights-compatible. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law stipulate that remedy should include: (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for harm suffered; and (c) access to relevant information concerning violations and reparation mechanisms (sect. 11). The Basic Principles further provide that reparations should be proportional to the actual harm caused and should consider restitution, rehabilitation, satisfaction, including disclosure and apologies, and guarantees of non-repetition, in addition to compensation. These criteria are also increasingly considered in the context of abuses that do not amount to gross violations.

41. When applied to specific situations, the Basic Principles will result in a range of outcomes, the elements of which may vary greatly. What constitutes adequate, effective and prompt reparation for harm in the view of the victim will depend on a number of subjective elements, including the personal preferences and circumstances of the victim, the specific harm suffered and the local context and culture. Beyond the Basic Principles, it may thus not be possible to identify common elements of effective remedy outcomes. The Working Group also notes that remedy processes and outcomes are interdependent and intertwined, and that they should be seen in tandem. For example, victims' experience with a process may greatly influence whether they determine the outcome to be satisfactory or rights-compatible. Similarly, the way a mechanism is designed may give preference to certain types of outcomes, for example, monetary compensation. A lack of capacity or perception of bargaining power on the part of victims may also influence perceptions of what constitutes an effective remedy outcome. These circumstances pose challenges in assessing whether a mechanism has provided for remedy that is effective.[33]

42. The Working Group considers that there is a continued need to further document practices of and experiences with non-judicial grievance mechanisms in order to assess the performance of such mechanisms over time in delivering effective remedy, to promote accountability, and to increase learning on how grievances can be most effectively addressed. In particular, more research is needed to establish useful indicators to enable business enterprises, mechanisms, civil society and other stakeholders to evaluate the

[31] See guiding principle 31.

[32] See A/HRC/26/25/Add.3 and A/HRC/26/25/Add.5. See also A/68/279, footnote 37.

[33] Basic Principles, sects. 12 to 23.

effectiveness of processes and outcomes.[34] Also needed is more guidance on evaluating non-judicial grievance mechanisms against the effectiveness criteria of guiding principle 31, in order to assess how different remedy processes are suited to different grievances, as well as ways to improve the performance of such mechanisms.

2. Access to effective judicial remedy

43. The Working Group considers that effective judicial mechanisms are at the core of ensuring access to remedy and that States should take steps to reduce or eliminate legal and practical barriers in that regard.[35] The legal and practical barriers facing victims seeking to bring claims through the courts have been comprehensively documented.[36] Those barriers continue to prevent victims from gaining access to effective remedy. The Working Group encourages States to map current legislation and practices in relation to corporate liability for involvement in human rights abuses, as part of their efforts to implement the Guiding Principles.

44. In terms of the effectiveness of judicial remedy outcomes, the shortage of successful cases and the relatively high number of cases that are settled out of court[37] mean that there is a lack of available information. As noted above, remedy outcomes and processes are interrelated; for example, where victims face lengthy delays in court proceedings, remedy may not be perceived as being effective, even if victims are ultimately successful in obtaining compensation.

45. Towards the end of his mandate, the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, called for further clarification of standards relating to appropriate investigation, punishment and redress where business enterprises cause or contribute to gross human rights abuses, as well as of what constitutes effective, proportionate and dissuasive sanctions in such cases. The Working Group has also reflected on how to approach corporate liability for gross human rights abuses,[38] and in 2013 supported the Office of the United Nations High Commissioner for Human Rights (OHCHR) in commissioning an independent study to examine the effectiveness of domestic judicial

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[34] See A/HRC/26/25/Add.3.

[35] See guiding principle 26 and commentary.

[36] See, for example, A/HRC/11/13/Add.1. In the context of gross human rights abuses, see: Jennifer Zerk, "Corporate liability for gross human rights abuses: towards a fairer and more effective system of domestic law remedies", report prepared for the Office of the United Nations High Commissioner for Human Rights (available from www.ohchr.org/EN/Issues/Business/Pages/OHCHRstudyon domesticlawremedies.aspx). See also Amnesty International, *Injustice Incorporated* (London, 2014), available from www.amnesty.org/en/library/asset/POL30/001/2014/en/33454c09-79af-4643-9e8e-1ee8c972e360/pol300012014en.pdf, and Gwynne Skinner et al., *The Third Pillar* (International Corporate Accountability Roundtable et al., 2013), available from http://accountabilityroundtable.org/wp-content/uploads/2013/02/The-Third-Pillar-FINAL.pdf.

[37] Zerk, "Corporate liability", p. 94.

[38] See, for example, the keynote statement by the Working Group at the 2013 Regional Forum on Business and Human Rights for Latin America and the Caribbean, available from www.ohchr.org/Documents/Issues/Business/submissionsColombia/AlexGuaqueta_LACForumopening_speech_en.pdf; the closing statement of the Working Group Chairperson at the 2013 annual Forum on Business and Human Rights, available from www.ohchr.org/Documents/Issues/Business/ForumSession2/Statements/closingChairpersonWGForum2013.pdf; and the Working Group brief on its approach to urgent actions and allegation letters, available from www.ohchr.org/Documents/Issues/Business/WGBrief_Communications_with_States_and_non-State_actors_12.03.2014.pdf.

mechanisms in relation to business involvement in gross human rights abuses, including legal and practical barriers to access to justice.[39]

46. The study found that existing arrangements for preventing, detecting and remedying cases of business involvement in gross human rights abuses are not working well: victims in many cases fail to get effective redress and face numerous legal and practical barriers to effective access to the courts, States face uneven patterns of use of remedial mechanisms, and business enterprises in many cases operate in an environment of significant legal uncertainty. The study recommends that a consultative, multi-stakeholder process be launched, aimed at clarifying key issues of principles and policies, and that a process to identify models of best State practice in relation to the functioning of domestic judicial mechanisms be established. The Working Group supports the recommendation and will be contributing to the process.

3. Discussions on the desirability of an international legal instrument on business and human rights

47. In March 2014, the Working Group participated in a workshop hosted by the Governments of Ecuador and South Africa to explore options for paving the way for a legally binding instrument on business and human rights. As expressed by some stakeholders during the workshop, the underlying assumption behind the formulation of an international treaty is that such an instrument is best positioned: (a) to correct inadequacies in existing bilateral and multilateral investment treaties and arbitration proceedings that settle disputes related to corporate impact, which often do not leave enough space for States to protect their citizens against adverse corporate impact, while protecting the interests of investors; (b) to provide for legal accountability and remedy where transnational corporations are involved in human rights abuses and where States have been reluctant to adopt appropriate prevention and remedy measures; and (c) to provide for a clear division of responsibilities between "home" and "host" States.

48. Those are legitimate expectations. The Working Group understands the impatience on the part of some stakeholders with the pace of implementation of the Guiding Principles, in particular with respect to access to remedy. However, in the view of the Working Group, a careful review should be conducted before embarking on a standard-setting process as to whether and how the factors that impede State implementation of existing international human rights obligations in this space would be overcome by a new international legal instrument on business and human rights. Those discussions should be informed by specific research on the precise nature of existing implementation gaps.

49. The Working Group recalls that the "Protect, Respect and Remedy" Framework and the Guiding Principles are derived directly from existing legal obligations that require States to ensure that human rights are protected against abuse by all business enterprises, including transnational corporations as well as national business enterprises. The Guiding Principles elaborate on the practical implications of those obligations.

50. Great care should be taken to guard against the risk of reversing or undermining the clarity and the regulatory and political momentum gained so far by the "Protect, Respect and Remedy" Framework and the Guiding Principles. The Guiding Principles provide a holistic approach for prevention and redress, a formula that equips stakeholders to tackle the challenges of governance gaps created by globalization, and a platform for multiple and mutually reinforcing avenues to shape corporate conduct via human rights treaties and

[39] See Zerk, "Corporate liability".

market regulation. This is known as the "smart mix" of measures — national and international, mandatory and voluntary — to foster business respect for human rights.

51. Irrespective of whether States choose to pursue the path of an international legally binding instrument, in the view of the Working Group, the international community already has conceptual and practical building blocks in the Guiding Principles that can move practice forward in both the areas of prevention and remedy. Given that any treaty-making process is likely to take a number of years, there is an urgent existing need to address gaps in prevention and access to remedy in the "here and now". One avenue for States would be to develop and implement national action plans with provisions for addressing the legal and practical barriers to access to remedy for victims. Such efforts are urgently needed and will continue to be relevant in the context of a potential legally binding instrument, in order to ensure effective implementation of relevant standards and commitments.

D. Reflections on the annual Forum on Business and Human Rights

1. Annual Forum

52. The first two annual forums on business and human rights, mandated by the Human Rights Council, took place in 2012 and 2013 under the guidance of the Working Group.[40] The forums are the largest global gatherings to date to discuss progress in and challenges with implementing the business and human rights agenda and the Guiding Principles. Each Forum has drawn high numbers of participants: in 2012, close to 1,000 participants from over 80 countries registered, and in 2013, about 1,500 participants from over 100 countries registered. In that respect, the Working Group notes that the Forum has been successful in attracting and maintaining interest from stakeholders globally and including new audiences in shared learning and in policy dialogues.

53. The agendas of the forums focused on taking stock of progress, challenges with respect to implementing the three pillars of the Guiding Principles, and broadening the number of multipliers and catalysts. The Working Group considers that the forums have served those purposes, and have contributed to disseminating lessons learned and good practices on the implementation of the Guiding Principles to a wider audience. Issues that have been discussed include: impacts on particular stakeholder groups, such as children, indigenous peoples and other groups that may be at risk of increased vulnerability to adverse impacts; challenges and practice in specific sectors, such as agribusiness, the extractive sector, the security sector, the financial sector and the information and communications technology sector; and cross-cutting issues such as due diligence, reporting, corporate governance, access to judicial and non-judicial remedy, investment policies, and human rights risks in supply chains.

54. The discussions during the forums indicate the relevance of the Guiding Principles in providing an overarching common foundational framework. A number of States and business enterprises have taken significant steps towards effective implementation of the Guiding Principles, and many civil society organizations are using the Guiding Principles effectively in their advocacy and accountability work. By allowing for the sharing of good practices and the discussion of challenges and information on specific cases, the forums have helped build capacity and awareness among stakeholder groups.

55. With regard to the 2014 Forum, the Working Group has reflected on lessons and trends from the first two forums. For example, the Working Group notes that some of the

[40] All information and documentation related to the 2012 and 2013 annual forums is available from www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx.

discussions during the 2013 Forum were not constructive to engagement across stakeholder groups. The Forum is a space where civil society and affected stakeholders will voice legitimate concerns of urgent and serious human rights abuse involving business enterprises; however, it should also be a space that encourages the sharing of lessons on incremental policy steps and challenges. The Working Group therefore calls on all stakeholders, including States, business enterprises and associations and civil society organizations, to jointly strive to maintain a space for constructive exchange, and to continue to build common understanding of the state of play, current gaps and challenges and ways forward.

56. Another key challenge is the need to enhance the level of business participation in the Forum. Some of the business enterprises that have participated are major economic actors, in terms of size and global reach. Many of those enterprises are also at the forefront of innovating on and implementing the Guiding Principles. However, greater engagement from business is needed to advance in the formulation of solutions, including in relation to remedy. Also, the Guiding Principles need to reach thousands of enterprises across the globe. Raising awareness among the business community of the value of reaching scale in the implementation of the Guiding Principles is a strategic consideration not only for the Forum, but for the wider business and human rights agenda.

57. The Working Group also notes the calls to enhance the participation of victims in the Forum. It remains committed to ensuring that the perspective of victims is represented, and is exploring ways of ensuring effective participation of affected stakeholders through dialogue with civil society organizations. It is worth noting that the second Forum enjoyed high international civil society participation, with that stakeholder group accounting for more than 550 of the registered participants (more than 700, if including academics). While the regular budget of the United Nations funds the travel of 15 participants to the Forum, the Working Group and OHCHR managed to secure additional funds to support the participation of more than 40 representatives of civil society, indigenous peoples, trade unions, other affected stakeholders and academics. Broadening participation to include other civil society groups and more stakeholders who are directly affected by negative corporate behavior, as well as increasing the participation of businesses and of stakeholders from outside of Europe and North America, is important for future forums.

58. While the forums have highlighted progress and challenges across sectors and issues, the Working Group is responding to calls from stakeholders to narrow the thematic focus of the 2014 Forum, to allow for more in-depth discussions around core issues. The 2014 Forum will have a particular focus on national action plans to implement the Guiding Principles, which includes the issue of access to effective judicial and non-judicial remedy. The 2014 Forum will also continue to offer training sessions on the Guiding Principles, single-stakeholder meetings and platforms for sharing tools and examples of practice.

2. Regional Forum

59. In 2012, the Working Group announced its objective of holding regional forums on business and human rights as a way to promote the effective and wide dissemination and implementation of the Guiding Principles. The first Regional Forum on Business and Human Rights for Latin America and the Caribbean, organized by the Working Group in collaboration with the United Nations Development Programme and the Government of Colombia, was held on 28 and 29 August 2013 in Colombia.[41] About 400 people from 27 countries took part.

[41] The summary report of the regional forum is contained in A/HRC/26/25/Add.2.

60. The Regional Forum was successful in bringing together representatives of civil society, business enterprises and government that would have otherwise not engaged with each other in their own local contexts, and in triggering concrete implementation efforts. Since the Regional Forum, the Working Group has conducted follow-up engagements with the Inter-American Commission on Human Rights, the Organization of American States, regional State-based and private organizations in Central America, regional and subregional representatives of United Nations agencies and international organizations, including the International Labour Organization, and representatives from all stakeholder groups in Colombia, Costa Rica, Guatemala and Peru to support concrete implementation efforts.

61. Building on the positive experience, the Working Group is collaborating with the African Union Commission in planning a regional forum to be held in Africa in 2014.The main purpose of the Africa regional forum will be to engage key local actors and stakeholders to promote multi-stakeholder dialogue and cooperation on business and human rights, and identify challenges and opportunities for promoting wide and comprehensive implementation of the Guiding Principles in Africa. The regional forum will offer opportunities for capacity-building on the Guiding Principles, and will seek to reinforce ongoing local efforts and spur new action with regard to preventing and addressing adverse impacts of business activity, as a key foundation for sustainable development and the realization of human rights for all. It will also address issues of particular relevance to the regional context, including the agribusiness and extractive sectors.

E. Advocacy

62. The Working Group considers that an important part of its mandate is to use its public platform to influence relevant stakeholders to affect specific policy change in line with the Guiding Principles, and to bring attention to situations or issues of concern. Some examples of how the Working Group has engaged in advocacy activities are provided below.

63. The Working Group has advocated for the integration of the Guiding Principles in the post-2015 development agenda, together with other mandate holders and through direct outreach. The Working Group considers that the new global development framework needs to reflect the duty of States to establish accountability mechanisms for ensuring and monitoring business respect for human rights, including effective access to remedy mechanisms when adverse impacts occur. As business enterprises are increasingly seen as partners in global development, there is a pressing need to ensure that such efforts are undertaken based on human rights due diligence, and that effective accountability mechanisms are put in place.

64. The Working Group has also issued public statements in relation to specific situations of adverse human rights impacts linked to business activities. For example, in the aftermath of the collapse of the Rana Plaza factory building in Bangladesh, the Working Group issued a press statement urging international clothing brands to work together with the Government of Bangladesh, international organizations and civil society to address working conditions in the garment sector.[42] In follow-up, the Working Group hosted a public discussion on human rights in global garment supply chains to discuss lessons learned from that event with respect to the implementation of the Guiding Principles in

[42] OHCHR, "UN expert body urges international brands to work with Bangladesh to prevent another garment disaster", press release dated 8 May 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13309&LangID=E.

complex global supply chains, including with respect to human rights due diligence and access to remedy for victims.[43]

65. Together with other mandate holders, the Working Group issued a press release to urge the halting of a proposed mega-steel project in eastern India, which would allegedly lead to the displacement of more than 22,000 people.[44]

F. Communications

66. The Working Group is mandated to seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights holders.[45] Information has been received through the special procedures communications procedure, through other Working Group activities, for example meetings during country visits, and through the annual and regional forums. The Working Group has used the information to inform its work and strategy, to identify barriers to the effective implementation of the Guiding Principles and gaps in the protection of human rights in the context of business activities and to inform recommendations made to States, business and other actors on the implementation of the Guiding Principles.

67. The Working Group has also sent a number of communications to States and business enterprises, approaching those communications strategically to introduce the core concepts, obligations, responsibilities and expectations set out in the Guiding Principles.[46] The Working Group expresses its thanks to those who bring information to its attention, which is essential to continue to develop a firm understanding of the adverse impacts of business activities on human rights and the key challenges to rights holders in obtaining access to remedy. The Working Group continually revisits its strategy and activities in the light of the information provided, and addresses communications on emblematic cases, where the issues at stake and the rights at risk of infringement can be applied to a number of other similar situations around the world.

68. Within this premise, and over the course of its mandate, the Working Group has sent communications to States and business enterprises across four regions, 16 of which have been made public.[47] The communications, which have been sent jointly with other special procedure mandate holders, have addressed issues ranging from the alleged forced eviction of residents and adverse impacts on human rights linked to the construction of a steel plant to the alleged unaffordability of water and sanitation for vulnerable groups linked to the privatization of water and sanitation services and the alleged negative impact on lowest incomes of rising water costs leading to water poverty.

69. One trend that stands out in the communications received is related to human rights defenders. Communications have addressed alleged murders of, attacks on and acts of intimidation against human rights defenders who campaign against the adverse impacts of extractive company operations and allegations regarding the impact of mining and

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[43] See www.ohchr.org/Documents/Issues/Business/Session5/WGBHR20JunePanelConceptNote.pdf and www.ohchr.org/Documents/Issues/Business/Session5/WG5SessionPanelDiscussion.pdf.

[44] OHCHR, "India: urgent call to halt Odisha mega-steel project amid serious human rights concerns", press release dated 1 October 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13805&LangID=E. See also A/HRC/25/74, pp. 16 and 18.

[45] Human Rights Council resolution 17/4, para. 6 (b).

[46] See Working Group brief of March 2014, available from www.ohchr.org/Documents/Issues/Business/WGBrief_Communications_with_States_and_non-State_actors_12.03.2014.pdf.

[47] Ibid. The brief includes a summary of each public communication.

hydroelectric projects on indigenous peoples. The Working Group is gravely concerned about a disturbing increase in attacks and acts of intimidation by State and non-State actors against those who protest against the actual and potential adverse impacts of business operations and major development projects.

70. The Working Group also, together with other special procedure mandate holders, issued a press release linked to a communication.[48]

71. In its communications, and with regard to the State duty to protect, the Working Group has raised questions relating to: the extent to which a State has implemented the Guiding Principles and fulfilled its obligation to protect against human rights violations, including those perpetrated by third parties; what policies and measures have been put in place to ensure that business enterprises respect human rights; and what steps the Government has taken to prevent, investigate, punish and redress human rights abuse within its territory and/or jurisdiction by business enterprises. In relation to large projects, the Working Group has specifically queried the extent to which States have consulted with potentially affected communities and whether any environmental and social impact assessments have been undertaken.

72. The Working Group has also sent communications to home States of business enterprises linked to allegations, and specifically queried what measures the State has taken to prevent, investigate, punish and redress human rights abuse by business enterprises within its territory and/or jurisdiction; what policy, legal, regulatory and/or adjudicatory measures have been taken to encourage or require that business enterprises domiciled in its territory or jurisdiction meet their responsibility to respect human rights throughout their operations; whether guidance has been provided to business enterprises on how to respect human rights throughout their operations; and what judicial, administrative, legislative or other steps have been taken to ensure that victims of business-related human rights abuse by companies domiciled in that State have access to remedy.

73. With regard to the corporate responsibility to respect human rights, the Working Group has queried business enterprises on how they have sought to meet their responsibility to respect human rights as detailed in the Guiding Principles and, more specifically, on how they have sought to identify and assess, including through meaningful consultation with potentially affected groups, any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.

74. Eleven responses to these communications have been received, providing valuable clarifications on the allegations and on the status of understanding and implementation of the Guiding Principles across a range of States and business sectors.[49] In the view of the Working Group, these communications and press releases can be important tools to trigger a response from national authorities and draw the attention of the media, the public and the international community to a situation of concern. The Working Group recalls that the main purpose of the communications procedure is to obtain clarification in response to allegations of violations with a view to ensuring, along with the Government and other stakeholders concerned, the protection of human rights. The Working Group takes this opportunity to thank those who have provided clarification in response to allegations, and urges all to whom the Working Group sends a communication to engage in this procedure.

[48] See footnote 44 above.

[49] All responses are made public in the joint communication reports, available from www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

G. Capacity-building and guidance on the implementation of the Guiding Principles

75. Over the course of its mandate, the Working Group has received more than 200 requests to provide advice and guidance on the Guiding Principles, to raise awareness and to help initiate processes; the requests have come from all regions of the world and from all stakeholder groups. The Working Group has sought to offer guidance wherever possible within its mandate, capacity and resources, and particularly where it has identified that further clarification on the application of the Guiding Principles is required.

76. Lack of capacity within States, civil society and business enterprises, in particular small and medium-sized enterprises, is a continuing barrier to the effective implementation of the Guiding Principles.[50] In that respect, the Working Group considers that the creation of a global fund to support capacity-building efforts among all stakeholders is a priority for the business and human rights agenda.[51]

77. There has been particular demand for further guidance in the application of the Guiding Principles to the financial sector. The Working Group is co-chairing a process launched by the OECD Working Party on Responsible Business Conduct to develop guidance for the financial sector on the application of the OECD Guidelines for Multinational Enterprises. The process is aimed at producing guidance on key issues, such as due diligence, use of leverage and remedy processes for different parts of the financial sector, through case studies. The Working Group has also provided OECD with guidance on this issue in response to a specific request.[52]

78. The Working Group has participated in meetings and workshops on the Voluntary Principles on Security and Human Rights[53] to provide advice on the alignment of the Voluntary Principles with the Guiding Principles with respect to issues such as due diligence and access to remedy.

79. The Working Group has also explored the issue of "collective" or "cumulative" impacts on human rights, that is, situations where an individual business enterprise's impact may not constitute an adverse human rights impact, but where it is combined with the impacts of other business enterprises in the same sector or region, human rights are adversely affected. To advance the understanding of that issue, the Working Group convened an expert round-table meeting in 2013 to discuss approaches to identifying and managing specific collective impacts, including boom town effects and impacts associated with industrial parks and with collective (over)use of water and land.[54]

80. At the national level, the Working Group has provided guidance and/or technical assistance to State authorities, business enterprises and associations, civil society, indigenous peoples' representatives and other stakeholders, upon request, including by convening or participating in technical workshops and policy discussions. For example, in 2013 the Working Group provided guidance to government officials in Canada on State

[50] See A/HRC/21/21 and Corr.1 and A/HRC/26/25/Add.1.

[51] See the position of the Working Group on a United Nations-linked global fund on business and human rights. Available from www.ohchr.org/EN/Issues/Business/Pages/2014Activities.aspx.

[52] Available from www.ohchr.org/Documents/Issues/Business/LetterResponseToOECD.pdf.

[53] See www.voluntaryprinciples.org/.

[54] Expert meeting convened by the Working Group, 8 May 2013, Atlanta, United States of America; unofficial meeting report available from www.ohchr.org/EN/Issues/Business/Pages/2013Activities.aspx. Outputs from this meeting were also included in a "dilemmas" forum created by the Global Compact Initiative, available from http://human-rights.unglobalcompact.org/dilemmas/cumulative-impacts/#.Uz7B8KiSzGA.

implementation of the Guiding Principles, and provided guidance on aspects of the implementation of the Guiding Principles to academic experts, businesses, civil society and the Canadian Human Rights Commission. The Working Group also provided guidance to stakeholders in Cambodia on the application of the Guiding Principles in the agribusiness sector, through engagement with the Global Compact local network, with the support of OHCHR. In Guatemala, the Working Group provided capacity-building to State authorities, the Chamber of Commerce, the Chamber of Mining, business enterprises, civil society representatives and indigenous peoples' organizations, with the support of OHCHR-Guatemala. The Working Group also engaged in the elaboration by the Council of Europe of a non-binding instrument on business and human rights with a view to addressing gaps in the implementation of the Guiding Principles at the regional level.[55]

81. In its 2013 report to the General Assembly (A/68/279), the Working Group explored the challenges faced in addressing the adverse impacts of business-related activities on the rights of indigenous peoples through the lens of the Guiding Principles. The focus of the report was on how the Guiding Principles could bring clarity to the roles and responsibilities of States, business enterprises and indigenous peoples when addressing those impacts. The Working Group also explored the implications of the State duty to protect, the corporate responsibility to respect, and obligations relating to access to effective remedy in the context of impacts on indigenous peoples, including ways in which indigenous peoples may be particularly vulnerable to adverse human rights impacts from business activities, and identified examples of good practice.

82. The Working Group also participated in the advisory committee on the process of the European Commission to develop voluntary guidelines on the implementation of the Guiding Principles in the oil and gas, employment and recruitment, and information and communications technology sectors.

IV. Looking ahead

83. Pursuant to its mandate to advance in the implementation of the Guiding Principles, the Working Group focused its strategy in 2012–2013 on the dissemination and promotion of their effective and comprehensive implementation. It sought to reach new audiences, multipliers and catalysts, which included State-level and international-level policymakers, business decision makers and civil society organizations. Today there is greater awareness of the Guiding Principles and greater clarity regarding the opportunities for further operationalization within specific industry sectors, regions, issue areas and institutions.

84. At its seventh session, the Working Group decided to prioritize advocacy for and guidance in the formulation and implementation of national action plans and efforts to promote the incorporation of the Guiding Principles into relevant policy frameworks of international institutions. The Working Group will continue to collaborate with OECD to produce further due diligence guidance for the financial sector. In its first report to the Human Rights Council (A/HRC/20/29), the Working Group acknowledged the strategic importance of that sector and the effect it could potentially have in shaping the incentives and disincentives of both business and State actors with regard to human rights. The Working Group also considers multilateral public financial institutions as key actors and encourages the alignment of their social safeguards and grievance mechanisms with the Guiding Principles.

[55] See www.coe.int/t/dghl/standardsetting/hrpolicy/Other_Committees/HR_and_Business/Default_en.asp.

85. Furthermore, the Working Group will continue to prioritize the exploration of practical ways to increase access to judicial and non-judicial remedy. In that respect, the Working Group will provide advice and guidance and facilitate multi-stakeholder dialogues on concrete aspects of effective remedy, including judicial remedy and the issue of corporate accountability and liability.

86. Finally, in the new work stream, "building blocks for a robust human rights regime", the Working Group aims to advocate further the incorporation of the Guiding Principles into the work of international and regional monitoring of bodies, including courts, human rights commissions and United Nations treaty bodies, and processes, such as the universal periodic review, and explore key sub-themes, such as the implementation of the Guiding Principles in conflict zones, opportunities for businesses to contribute to the prevention of harm, and the implication of the Guiding Principles in those contexts for corporate complicity in human rights violations.

87. These priority areas are designed to seek and encourage action to increase the number of States and business enterprises implementing the Guiding Principles. Greater scale is needed to create the political and economic incentives for the concrete implementation of the Guiding Principles. That should be complemented with targeted capacity-building within States — a task that all stakeholders need to continue to carry out.

V. Conclusions and recommendations

A. Conclusions

88. **Significant efforts have been undertaken to implement the Guiding Principles on Business and Human Rights since their endorsement by the Human Rights Council in 2011.**

89. **The Working Group has supported dissemination and implementation efforts by reaching out to new audiences, multipliers and catalysts. It has also contributed to the provision of a space for constructive dialogue on progress and challenges around the implementation of the Guiding Principles, both internationally and regionally; to the construction of a stronger business and human rights regime, including through the development of national action plans on business and human rights; and to the enhancement of the understanding of the notion of effective remedy for adverse human rights impacts linked to business activities.**

90. **A solid and shared understanding of the distinct but complementary duties and responsibilities of States and business enterprises, as well as their practical implications, combined with predictability in implementation and a constructive multi-stakeholder approach, are required to continue the advances made in addressing adverse business-related human rights impacts.**

91. **Despite the significant efforts made to implement the Guiding Principles, key challenges remain, including with respect to broadening dissemination, reaching scale in implementation, building trust between stakeholders and overcoming barriers to effective remedy. There is a growing gap between the pace of implementation and the expectations of civil society and affected stakeholders.**

92. **The Working Group is concerned that the remaining challenges impede progress in the implementation of the Guiding Principles. That poses significant risks to the continued broad-based support for the Guiding Principles, which is crucial for their continued legitimacy as the authoritative global framework for business and human rights. For that reason, the Working Group urges that attention and efforts**

towards the implementation of the Guiding Principles be scaled up in order to more effectively prevent and address adverse business-related human rights impacts.

93. There are no easy solutions for addressing the multifaceted and complex challenges of business and human rights, or for providing the effective remedy and accountability that victims are legitimately seeking as a matter of urgency. Addressing those challenges and effectively managing business-related human rights risks requires sustained attention and a "smart mix" of regulatory and policy approaches and incentives. The Working Group remains committed to playing its part in supporting and, where appropriate, leading those efforts.

B. Recommendations

94. States should:

(a) Include business and human rights issues and efforts to promote the implementation of the Guiding Principles in the universal periodic review process;

(b) Engage with the Working Group in its effort to develop guidance on the process, essential substantive elements and review of national action plans to implement the Guiding Principles, and consider road-testing that guidance and engaging in a process of regular sharing of lessons and peer review with a view to speeding up progress in implementation;

(c) Ensure the protection of human rights defenders who raise awareness of the impacts of business activities, especially large infrastructure and productive development projects, and communicate to business enterprises that they also need to respect the rights of human rights defenders;

(d) Support the process led by the Secretary-General to explore the feasibility of establishing a global fund aimed at addressing the acute capacity gaps and challenges in the area of business and human rights;

(e) Support the process envisaged in the OHCHR-commissioned study on corporate liability for gross human rights abuses to initiate a multi-stakeholder process to clarify key issues of policy and principles, and a process to identify best practice at the State level;

(f) As a matter of priority, review access to remedy for victims of business-related adverse human rights impacts, including legal and practical barriers to accessing courts, and the availability and effectiveness of State-based non-judicial mechanisms;

(g) Provide appropriate public information on the performance of key non-judicial and judicial mechanisms and on the use of administrative sanctions in cases of corporate breaches, and the extent to which they deliver effective remedy in terms of process and outcomes;

(h) Consider the requests of the Working Group for invitations to conduct country visits.

95. Business enterprises should:

(a) Participate in and support the development of national action plans to implement the Guiding Principles;

(b) Encourage industry and multi-stakeholder initiatives on the implementation of the Guiding Principles;

(c) Participate in the annual Forum on Business and Human Rights and other meetings and processes led by the Working Group to support information-sharing of lessons learned on implementation practices and challenges, and engage in the dialogue with other stakeholders on how to promote wider and effective implementation of the Guiding Principles;

(d) Participate in the Working Group-led surveys to measure the level of global uptake of the Guiding Principles;

(e) Report and communicate individually and at the level of business associations on the overall progress in the implementation of the Guiding Principles and on the performance of operational-level grievance mechanisms.

96. Civil society organizations are encouraged to:

(a) Continue to make full use of existing international and regional human rights mechanisms, including the United Nations, its mechanisms and representatives in the field of human rights, to raise business-related human rights issues;

(b) Continue to engage with the Working Group in dialogue and information-sharing on business and human rights challenges through communication in advance of the country visits of the Working Group, participation in the annual Forum and in other meetings and consultation processes led by the Working Group, and regular communication procedures.